

EXECUTIVE SUMMARY

My testimony reviews and analyzes the portion of the FCC's TRO, which related to identifying where competing carriers are not impaired without unbundled high capacity loops on a customer-specific basis. My testimony discusses Staff's determination of whether designated triggers are met for the appropriate levels of high-capacity loops.

I begin my testimony by discussing Enterprise Market Loops and the FCC's Impairment Analysis. The FCC found that CLECs are not impaired without access to unbundled OCn loops, but are impaired without access to DS1, DS3, and Dark Fiber loops.

My testimony goes on to discussion of Capacity-Based Impairment for DS1, DS3, and Dark Fiber loops. The FCC found that Dark Fiber loops and DS3 loops are not generally self-deployed due to the high investment and construction costs. There is a limitation on multiple, unbundled DS3 loops; a CLEC is limited to two DS3s to any single customer location. This is based on the findings that, as a carrier approaches customer demand for more than 2 DS3s at a particular location, it becomes economically feasible to self-deploy. The FCC did not find that self-deployment of DS1 loops is economic, again due to high investment and construction costs.

My testimony discusses each of the two triggers for analysis: the Self-Provisioning Trigger and the Competitive Wholesale Trigger. When two or more unaffiliated providers are using their own facilities at the appropriate capacity level, a customer location can be considered to be non-impaired without access to the appropriate unbundled loop. The Self-Provisioning Trigger is used to

analyze DS3 loops and Dark Fiber loops. The Competitive Wholesale Trigger is used to analyze DS1 loops and DS3 loops.

The FCC expected the State Commissions to complete the trigger reviews and determine their findings by July 2004. Staff has utilized Data Requests (DRs) issued to the ILECs and CLECs as well as DRs exchanged between the ILECs and CLECs.

Staff has determined there are five locations in Oklahoma where the Competitive Wholesale Trigger has been met for DS1 loops; five locations where the Self-Provisioning and/or Competitive Wholesale Trigger has been met for DS3 loops and no locations where the Self-Provisioning Trigger has been met for Dark Fiber.

EXHIBIT 8

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

**APPLICATION OF JOYCE E. DAVIDSON
DIRECTOR OF THE PUBLIC UTILITY DIVISION,
OKLAHOMA CORPORATION COMMISSION, TO
INITIATE A PROCEEDING FOR THE
IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S TRIENNIAL
REVIEW ORDER**

CAUSE NO. PUD 200300646



**PREFILED TESTIMONY
OF
LILLIE R. SIMON**

TRACK 3 - LOOPS

PREFILED TESTIMONY OF LILLIE R. SIMON

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INTRODUCTION

Q: Please state your name, business address, by whom and where you are employed and in what capacity.

A: My name is Lillie R. Simon. My business address is the Jim Thorpe Office Building, Room 500, Oklahoma City, OK. I am employed by the Public Utility Division ("Staff") of the Oklahoma Corporation Commission ("OCC" or "Commission") as a Public Utility Regulatory Analyst in the Telecom Section.

Q: Please provide a brief resume of your educational and employment background.

A: I graduated in 1995 from Southern Nazarene University with a Bachelor of Science in Sociology. I obtained my Masters in Science in Management from Southern Nazarene in 1997. In addition, I have over 24 years experience with Southwestern Bell Telephone in such positions as Design Consultant and Marketing Manager. I was also employed by the Oklahoma Water Resources Board as a Financial Analyst responsible for a portfolio of public water and/or sewer facility loans in excess of \$30 million.

Q: Have you previously testified before the Commission and have your credentials been accepted.

A: Yes.

22 Q: What is the purpose of your testimony?

23 A: The purpose of my testimony is to review and analyze the FCC's Triennial
24 Review Order¹ and offer testimony concerning the portion of Track Three that
25 seeks to identify where competing carriers are not impaired without unbundled
26 high capacity loops on a customer-specific basis. My testimony discusses Staff's
27 determination of whether designated triggers are met for the appropriate levels of
28 high-capacity loops.

29
30 Q: How is your testimony organized?

31 A: My testimony is organized in line with the FCC's TRO, in six sections:

- 32 • Executive Summary
- 33 • Section I is a discussion of Enterprise Market Loops and the FCC's
34 Impairment Analysis.
- 35 • Section II provides Capacity-Based Impairment Findings
- 36 • Section III is a discussion of the Location-Specific Review, including:
 - 37 ■ Self-Provisioning Trigger and
 - 38 ■ Competitive Wholesale Trigger.
- 39 • Section IV describes State Action Under Both Triggers, and
- 40 • Section V is Staff's recommendation.

41

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96, 98, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, (2003)(TRO).

EXECUTIVE SUMMARY

My testimony reviews and analyzes the portion of the FCC's TRO, which related to identifying where competing carriers are not impaired without unbundled high capacity loops on a customer-specific basis. My testimony discusses Staff's determination of whether designated triggers are met for the appropriate levels of high-capacity loops.

I begin my testimony by discussing Enterprise Market Loops and the FCC's Impairment Analysis. The FCC found that CLECs are not impaired with out access to unbundled OCn loops, but are impaired without access to DS1, DS3, and Dark Fiber loops.

My testimony goes on to discussion of Capacity-Based Impairment for DS1, DS3, and Dark Fiber loops. The FCC found that Dark Fiber loops and DS3 loops are not generally self-deployed due to the high investment and construction costs. There is a limitation on multiple, unbundled DS3 loops; a CLEC is limited to two DS3s to any single customer location. This is based on the findings that, as a carrier approaches customer demand for more than 2 DS3s at a particular location, it becomes economically feasible to self-deploy. The FCC did not find that self-deployment of DS1 loops is economic, again due to high investment and construction costs.

My testimony discusses each of the two triggers for analysis: the Self-Provisioning Trigger and the Competitive Wholesale Trigger. When two or more unaffiliated providers are using their own facilities at the appropriate capacity

64 level, a customer location can be considered to be non-impaired without access
65 to the appropriate unbundled loop. The Self-Provisioning Trigger is used to
66 analyze DS3 loops and Dark Fiber loops. The Competitive Wholesale Trigger is
67 used to analyze DS1 loops and DS3 loops.

68 The FCC expected the State Commissions to complete the trigger reviews and
69 determine their findings by July 2004. Staff has utilized Data Requests (DRs)
70 issued to the ILECs and CLECs as well as DRs exchanged between the ILECs
71 and CLECs.

72 Staff has determined there are five locations in Oklahoma where the Competitive
73 Wholesale Trigger has been met for DS1 loops; five locations where the Self-
74 Provisioning and/or Competitive Wholesale Trigger has been met for DS3 loops
75 and no locations where the Self-Provisioning Trigger has been met for Dark
76 Fiber.

**SECTION I
ENTERPRISE MARKET LOOPS AND
THE FCC'S IMPAIRMENT ANALYSIS**

Enterprise market customers fall into the categories of large enterprise business customers demanding multiple DS3s or OCn loops, or smaller enterprise business customers demanding DS1 or, occasionally, DS3 loops. CLECs are meeting the demands of some enterprise business customers by offering packages of voice and data sold under month-to-month or short-term contracts. On the other hand, the larger enterprise business customers usually enter into long-term contracts, which guarantee a substantial revenue stream over the life of the contract. The FCC was clear that, when conducting the impairment analysis, substantial weight should be given to the cost of constructing loop facilities in relation to the ability of the provider to recover those costs over time.

Q: What was the FCC's conclusion with regard to Enterprise Market Loops?

A: The FCC found that there are CLECs that have deployed their own fiber in order to service their enterprise customers entirely over their own loop facilities. However this deployment has been primarily at the OCn-level.

There is little evidence or documentation as to the availability of alternative providers of DS1 or DS3 loops and there is a vast discrepancy between the records provided by ILECs and those provided by CLECs as to the actual deployment of loops at these lower levels. In addition, there are few alternative transmission technologies to high-capacity loops, such as fixed-wireless.

101

102 Q: Why did the FCC delegate this authority to the OCC?

103 A: The FCC recognized that, while some CLECs may have deployed high-capacity
104 loops to particular customer locations, there is insufficient information available
105 to identify exact customer locations where this deployment has occurred.
106 Therefore, it was left to OCC to verify the FCC's findings.

107

108

SECTION II
FCC's CAPACITY-BASED IMPAIRMENT FINDINGS

Q: Please identify and explain the capacity-based impairment findings of the FCC.

A: There are four capacity-based findings discussed in the TRO in relation to high-capacity loops:

- Dark Fiber Loops
- OCn Loops
- DS3 Loops
- DS1 Loops

NOTE: 1 OCn = 3 DS3s; 1 DS3 = 28 DS1s; 1 DS1 = DS0s or Voice Grade Loops

Dark Fiber Loops

Dark Fiber is “optical fiber through which no light is transmitted and no signal is carried. It is unactivated deployed fiber that is left dark....to carry a signal or serve customers.”² The FCC found that CLECs are impaired at most locations without access to dark fiber loops, based on the high sunk costs required to deploy dark fiber to a specific location. According to the FCC, ILECs are “the largest source of intracity dark fiber nationwide as a result of their ‘first-mover’ fiber deployment to the majority of customer locations.”³ In most areas, the CLECs have no alternative to using the ILEC’s facility.

OCn Loops (1 OCn = 3 DS3s = 84 DS1s = 2,016 DS0s or Voice Grade Loops)

“OCn is an optical interface designed to work with a Synchronous Optical Network (SONET). OCn transmission facilities are deployed as SONET channels

² TRO footnote 628

130 having a bandwidth of typically 155.52 Mbps (OC3 of the equivalent capacity of 3
131 DS3s) and higher.”⁴ The FCC found that CLECs are not impaired without
132 access to unbundled “lit” OCn loops because the barriers can be overcome by
133 self-deployment at an OC3 or higher level, the use of unbundled dark fiber, or
134 the use of “lit” DS3s.

135 DS3 Loops (1 DS3 = 28 DS1s = 672 DS0s or Voice Grade Loops)

136 A DS3 loop is “a digital local loop having a total digital signal speed of 44.736
137 Mbps provided over various transmission media including but not limited to fiber
138 optics, coaxial cable, or radio.”⁵ The FCC found that CLECs are impaired on a
139 customer-specific basis without access to unbundled DS3 loops. This is largely
140 due to the CLECs’ inability to recover the required costs over a reasonable
141 period because DS3 loops do not, generally, provide sufficient revenue streams
142 to justify these costs.

143 The FCC did impose a limitation on multiple, unbundled DS3 loops. A CLEC is
144 limited to two unbundled DS3s to any single customer location, based on the
145 FCC’s findings that, as a carrier approaches customer demand for more than 2
146 DS3s at a particular location, it becomes economically feasible to self-deploy.

147 DS1 Loops (1 DS1 = 24 DS0s or Voice Grade Loops)

148 A DS1 loop is “a 1.544 Mbps first-level signal in the digital transmission
149 hierarchy. DS1 loops are provided over various transmission media and

3 TRO ¶312

4 TRO footnote 631.

5 TRO footnote 633.

150 combinations of transmission media, including but not limited to two-wire and
151 four-wire copper, fiber optics, or radio.”⁶ The FCC found that CLECs are
152 impaired without access to unbundled DS1 loops. It was determined that the
153 CLECs’ ability to self-deploy at the DS1 level may be possible because the same
154 CLEC had already self-provisioned OCn or a 3 DS3 loop capacity at the same
155 address. In these cases, the evidence “does not support the ability to self-deploy
156 stand-alone DS1 capacity loops nor does it impact”⁷ the DS1 finding of
157 impairment.

158 Because the record does not show self-deployment at the DS1 level is
159 economic, the State Commissions do not need to consider DS1 loops on a self-
160 deployment basis. The FCC found sufficient evidence of alternative providers at
161 the DS3 and higher capacity levels and, thus, believes there may be specific
162 locations where CLECs have deployed fiber and could offer their excess capacity
163 at the DS1 level.

6 TRO footnote 634

7 TRO footnote 957

164 **SECTION III**
165 **LOCATION-SPECIFIC REVIEW CONDUCTED BY STATES**
166 **APPLYING FEDERAL TRIGGERS**

167 Q: What are the FCC's requirements for the States' location-specific review?

168 A: The FCC delegated to the states a "fact-finding role to identify where competing
169 carriers are not impaired without unbundled high-capacity loops pursuant to two
170 triggers." ⁸ The two triggers are identified and discussed below:

- 171 • The Self-Provisioning Trigger, which is applied to Dark Fiber and DS3,
172 loops only.
- 173 • The Competitive Wholesale Trigger, which is applied to DS1 and DS3
174 loops only.

175
176 Q: How and when are these triggers applied?

177 A: There are distinctly different situations and methods for applying the two triggers
178 as covered in the following testimony.

179 **SELF-PROVISIONING TRIGGER:**

180 *Trigger Defined.* When two or more unaffiliated CLECs are using their own self-
181 deployed facilities and not facilities owned or controlled by one of the other
182 providers to a particular customer location, then CLECs are not impaired without
183 access to unbundled ILEC DS1 loops at that location. The two or more CLECs
184 must have existing facilities in place currently serving customers over the
185 relevant loop capacity level. If the State Commission "makes a finding of no
186 impairment based on the application of the Self-Provisioning Trigger, it is not

8 TRO ¶328

187 necessary to separately apply the Competitive Wholesale Facilities Trigger.”⁹

188 *Trigger Applied.* The self-deployed CLECs must be totally unaffiliated with each
189 other and the ILEC in addition to utilizing their own facilities and not the facilities
190 owned by another provider to the location. The exception would be in those
191 situations where the CLEC is utilizing dark fiber obtained on a long-term
192 indefeasible-right-of-use (IRU) basis.

193 *Special Considerations.* The FCC gave special consideration for Dark Fiber in
194 applying the Self-Provisioning Trigger. In those cases, the Self-Provisioning
195 Trigger is met with the presence of two or more CLECs “whether or not they are
196 offering dark fiber to other carriers to serve end-user customers to that
197 location.”¹⁰

198 *State Analytical Flexibility.* The FCC also stressed that in applying the Self-
199 Provisioning Trigger to high-capacity loops, the best indication is actual
200 competitive deployment, meaning that the provider must be currently providing
201 service over the facility. The FCC affirmed that, in those situations where the
202 Self-Provisioning Trigger has not been met for Dark Fiber and/or DS1 loops, the
203 State Commissions must consider other factors including “evidence of alternative
204 loop deployment at that location; local engineering costs of building and utilizing
205 transmission facilities; the cost of underground or aerial laying of fiber or copper;
206 the cost of equipment needed for transmission; installation and other necessary

9 TRO ¶332.

10 TRO ¶334.

costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.”¹¹

COMPETITIVE WHOLESALE TRIGGER

Trigger Defined. In using the Competitive Wholesale Trigger, the State Commission must determine if are two or more unaffiliated alternative providers that have access to the entire premises (including each and every unit in the case of a multiunit customer premises) and offer the specific type of high-capacity loop over their own facilities on a wholesale basis to other carriers.

The FCC included, in addition to dark fiber IRUs, dark fiber obtained on a lease/purchase basis, including dark fiber purchased from an ILEC on an unbundled basis, if the alternative provider attached its own optronics to the fiber in order to offer ‘lit’ fiber loops to CLECs on a wholesale basis.

Trigger Applied. The FCC specified that State Commissions should not use financial analysis when evaluating competitive wholesale providers other than the reasonable expectation that the providers are “operationally capable of continuing to provide wholesale loop capacity to that customer location.”¹²

11 TRO ¶335

12 TRO ¶338

226 **SECTION IV**

227 **STATE ACTION UNDER BOTH TRIGGERS**

228 Q: What state action did the FCC expect?

229 A: The FCC expected the State Commissions to complete the trigger reviews by
230 July 2004. All unbundled DS1, DS3, and dark fibers loops are to remain available
231 to all customer locations until the State Commissions determine that the
232 unbundled loops are not necessary. State Commissions are to continue with
233 further granular reviews to identify additional and/or future customer locations
234 where the triggers are met.

235
236 Q: What has the Staff done to meet these requirements of the FCC in regard to
237 Track 3a?

238 A: Staff initially issued Data Requests (DRs) to both the ILECs and CLECs
239 requesting identification, by wire centers, of customer names, and specific
240 addresses, where the Company believed the Self-Provisioning Trigger and the
241 Competitive Wholesale Trigger had been met.

242 SWBT returned a list of approximately 351 locations where it felt both triggers
243 had been satisfied. CLECs submitted significantly fewer locations in their DR
244 responses. So, it was necessary to issue numerous DRs to both the ILECs and
245 CLECs in order to narrow down the list used for Staff's analysis and
246 recommendation.

247 Using SWBT's initial list of addresses as a base, Staff reviewed responses to its

248 DRs and responses to DRs exchanged between the CLECs and ILECs, to
249 develop a list of 29 potential addresses where there may be a finding of no
250 impairment. Once this list was developed, Staff separated the provided loops
251 into DS1, DS3, and Dark Fiber facilities and further reviewed DR responses to
252 narrow down the list to the final result. After this step, it became clear which
253 location-specific customer premises would not be impaired. (See Attachment 1)

254

SECTION V
STAFF RECOMMENDATION

Q: What are Staff's findings in relation to the findings of impairment?

A: Staff's findings indicate the following:

- There are five (5) locations in Oklahoma where the Competitive Wholesale Trigger for DS1 loops have been met and will not be impaired without access to unbundled DS1 loops. These locations are:

- 101 N. Robinson, OKC
- 1100 N. Lindsay, OKC
- 20 N. Broadway, OKC
- 201 Robert S. Kerr Ave, OKC
- 101 W. Park Ave., OKC

- There are five (5) locations in Oklahoma where the Self-Provisioning Trigger and/or the Competitive Wholesale Trigger have been met for DS3 loops and will not be impaired without access to unbundled DS3 loops. These locations are:

- 100 N. Broadway, OKC
- 100 Park Ave., OKC
- 201 Robert S. Kerr, OKC
- 630 SW 7th, OKC
- 700 N. Greenwood, Tulsa

- There are no locations in Oklahoma where the Self-Provisioning Trigger has been met for Dark Fiber.

278 Q: Do these numbers agree with the numbers determined by the ILECs and/or
279 CLECs in their testimony?

280 A: No. SWBT identified 29 specific customer locations that meet both triggers.
281 Unfortunately, SWBT's Exhibit 5 (highly sensitive confidential version) of
282 locations did not indicate which triggers they considered were met at which
283 locations. Based on SWBT's testimony filed by J. Gary Smith for Track III, Staff
284 believes that some of SWBT's findings may be facilities deployed and/or utilized
285 for interstate services and/or data transmission. If this is the case, Staff doesn't
286 believe these locations satisfy the specified triggers.

287 The number of locations reported by CLECs do not match, but are more in line
288 with, Staff's findings.

289

290 Q: Did Staff consider the potential deployment for DS3 and Dark Fiber loops as
291 discussed in paragraph 335 of the TRO?

292 A: No. Due to the ambiguous and vague DR responses received, Staff was not able
293 to perform the detailed review and analysis necessary for this procedure.

294

295 Q: How does the recent US Court of Appeals decision ¹³ affect your testimony?

296 A: While the recent decision vacated and remanded the TRO, it did not specifically
297 address the portion of the TRO dealing with high-capacity loops on a customer-

13 *USTA v. FCC*, No. 00-1012, Decision (D.C. Cir. March 2, 2004).

298 specific basis. Whether the States are to continue in either a decision-making
299 position or a recommendation position, I don't foresee any changes to this
300 testimony other than the ability to have the opportunity to do further review and
301 pursue potential deployment for DS3 and Dark Fiber loops.

302

303 Q: Does this conclude Staff's testimony?

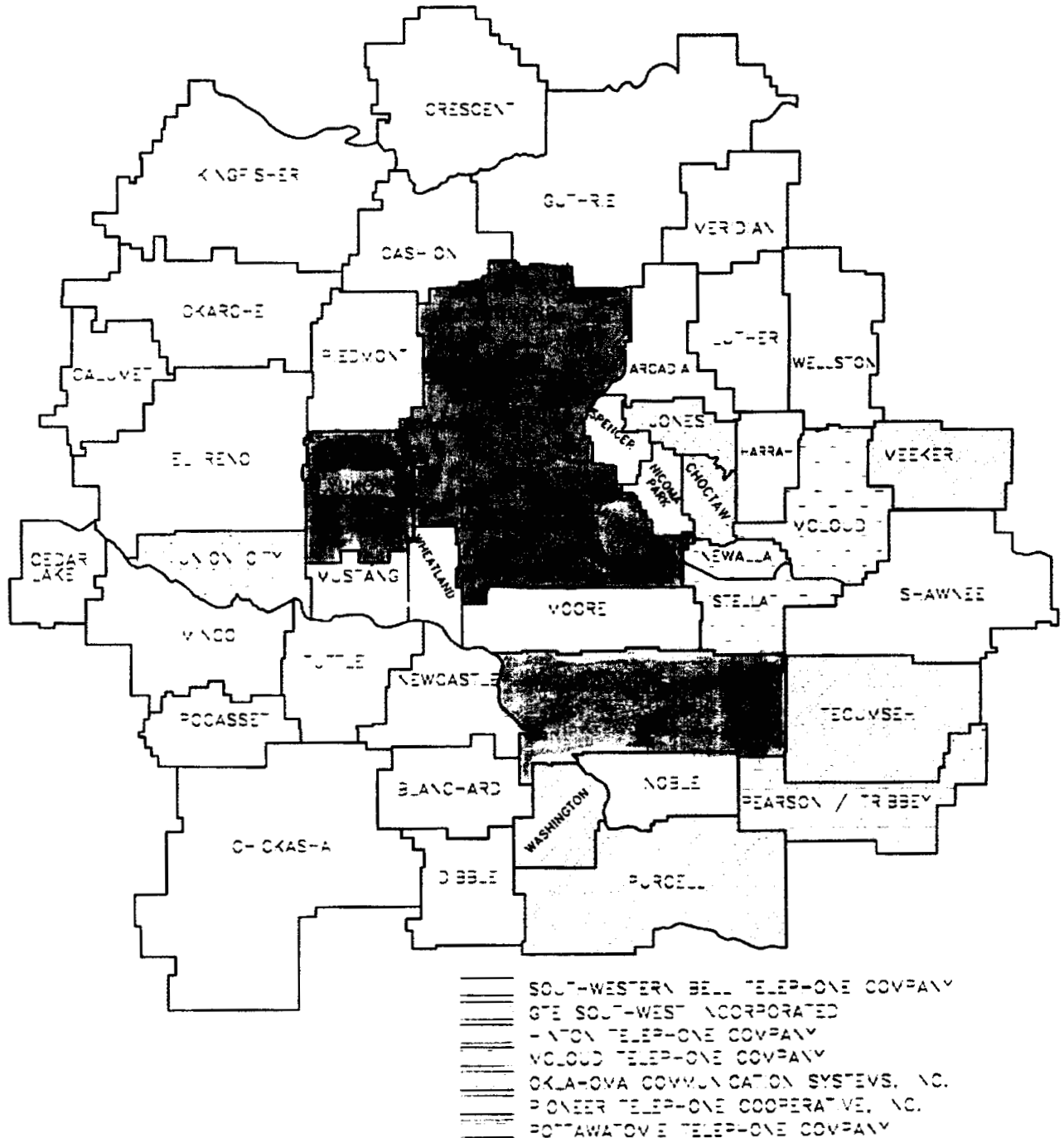
304 A: Yes, it does.

APPENDIX A

MASS MARKET SWITCHING

ILEC Response

OKLAHOMA CITY WIDE AREA CALLING PLAN



Note: The above calling scope includes all exchanges listed above and is mandatory. 06/01/95

Exchanges where ILEC identified 3 or more CLECs serving mass market with self-provisioned switching

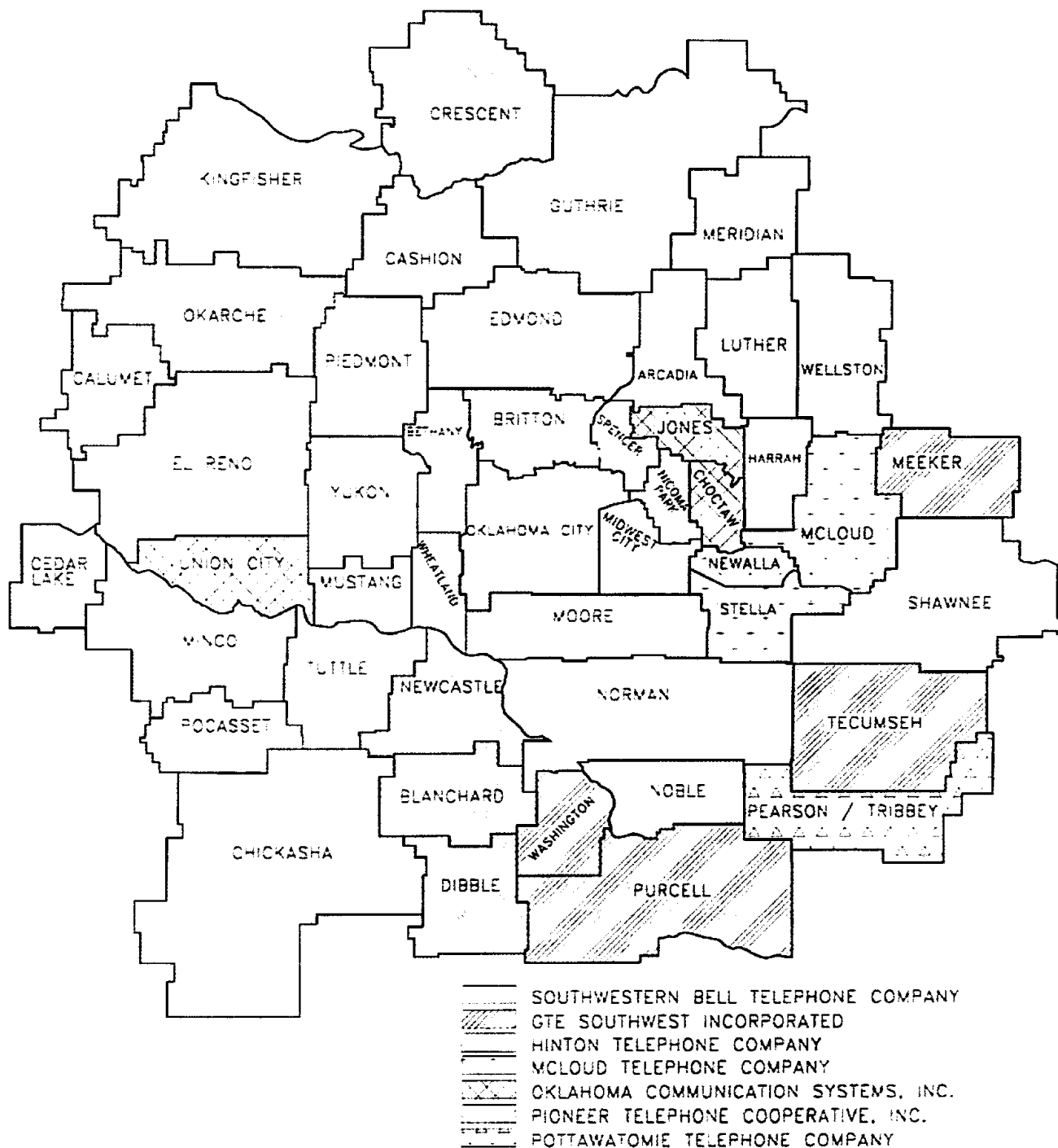
Exchanges where ILEC identified 2 CLECs serving mass market with self-provisioned switching

Exchanges where ILEC identified 1 CLEC serving mass market with self-provisioned switching

MASS MARKET SWITCHING

CLEC Response

OKLAHOMA CITY WIDE AREA CALLING PLAN



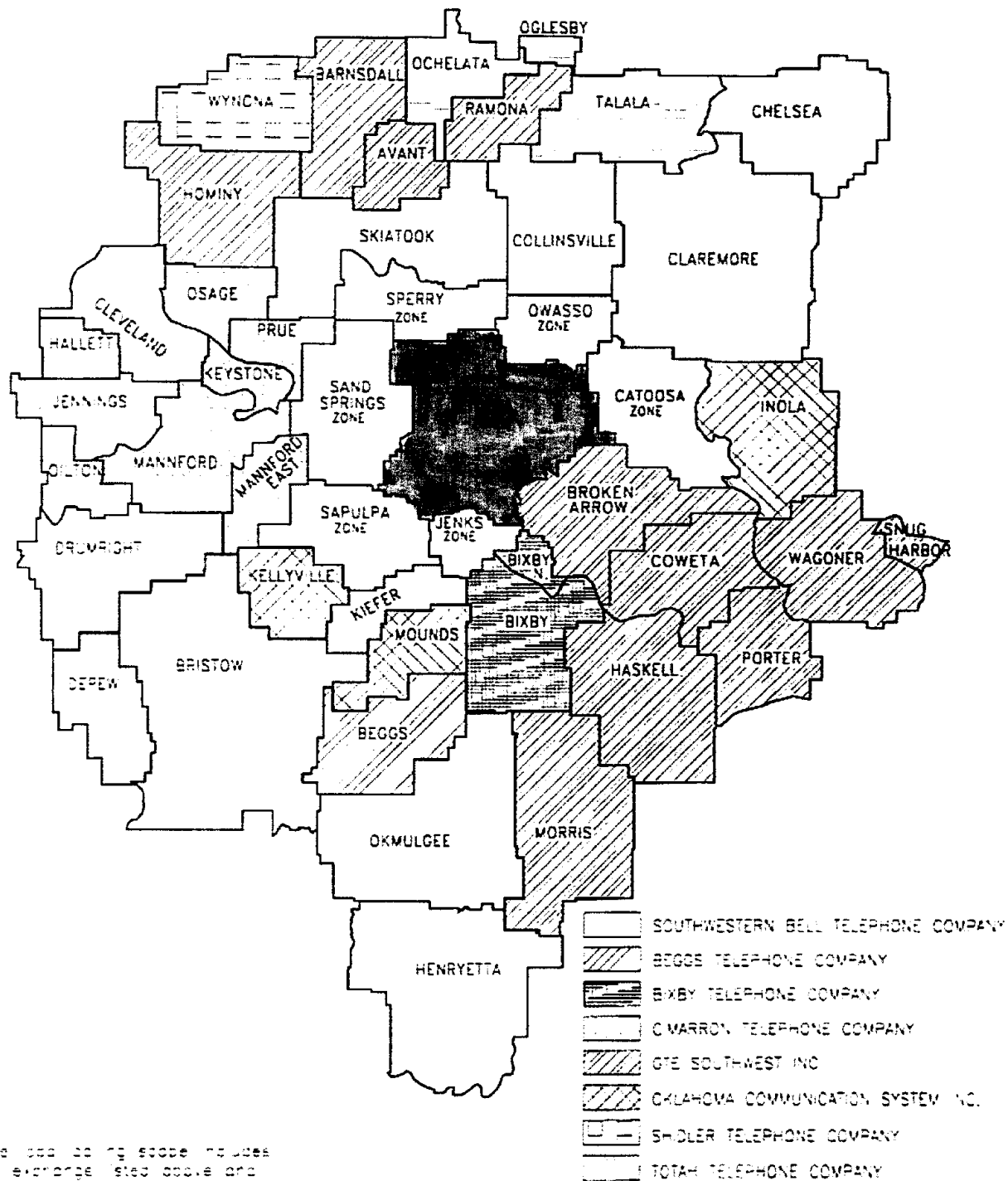
Note: The local calling scope includes all exchanges listed above and is mandatory. 06/01/98

Exchanges where
Only 1 CLEC identified by ILEC as serving mass market with self-provisioned
switching confirmed the ILEC's findings. All other CLECs stated that they served
only the enterprise market.

MASS MARKET SWITCHING

ILEC Response

TULSA WIDE AREA CALLING PLAN

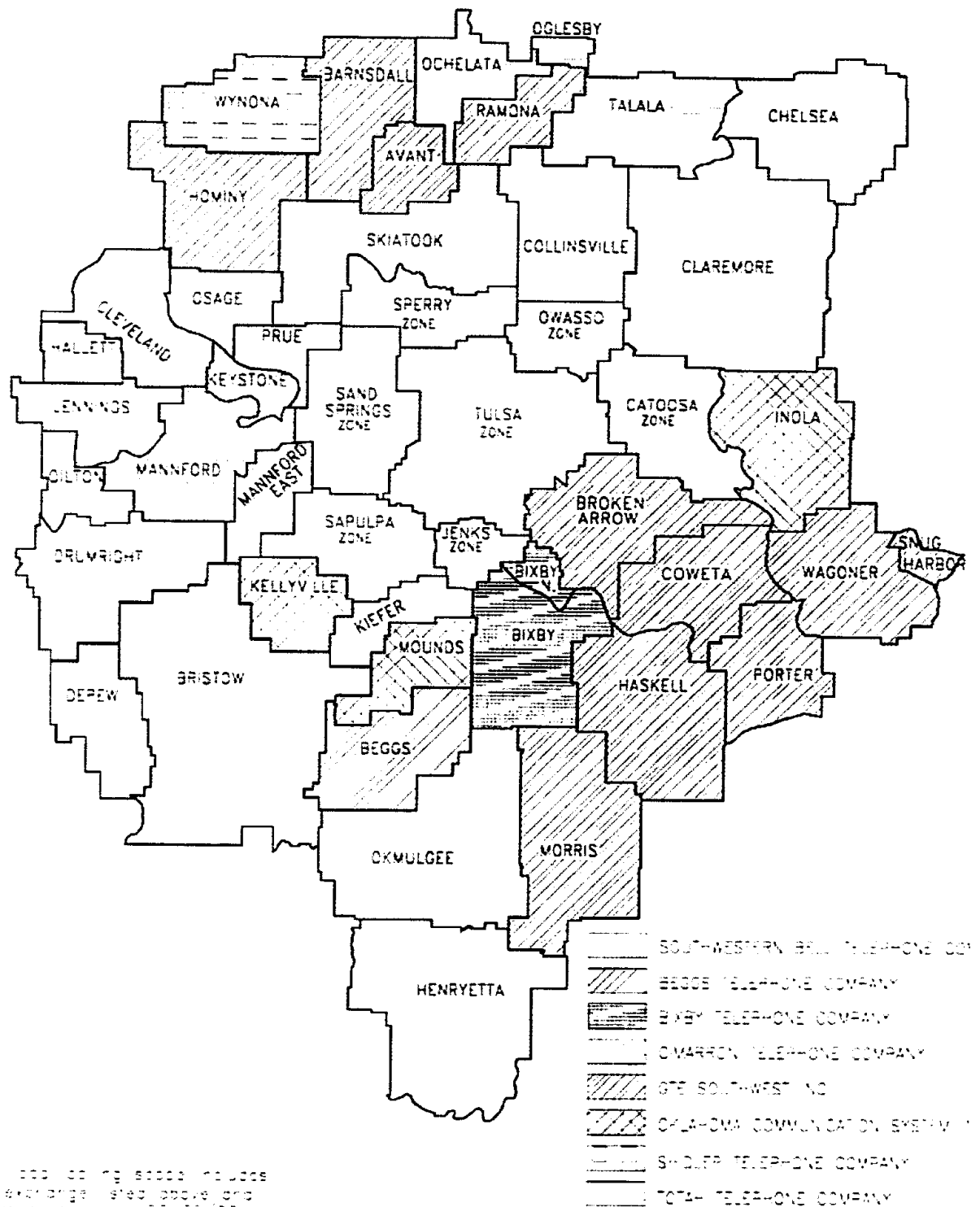


Exchanges where ILEC identified 3 or more CLECs were serving mass market with self-provisioned switching.

MASS MARKET SWITCHING

CLEC Response

TULSA WIDE AREA CALLING PLAN



None of the CLECs identified by the ILEC as serving mass market with self-provisioned switching confirmed the ILEC's findings. All CLECs stated that they served only the enterprise market.

APPENDIX B

TRO Triggers	DC Circuit Court of Appeals Decision(s) (March 2, 2004)	FCC Stance Regarding Contract Negotiation and Modified Rules	Staff Recommendations and Remaining Tasks
Track 2 – Batch Hot Cut Process			
<p>State commissions must approve a BHC process(es) within nine months of the order date. The BHC must address the costs and timeliness of the BHC process.</p> <p>In establishing ILEC BHC process a state commission has a specific criteria to follow</p> <p>OR</p> <p>Conclude that the absence of a batch cut migration process does not impair requesting carriers' ability to serve end users using DS0 loops in the mass market without access to local circuit switching on an unbundled basis.</p>	<p>See comments for Track 1 -- Switching.</p>	<p>See comments for Track 1 -- Switching.</p>	<p>The OCC is obligated to approve a Batch Hot Cut ("BHC") process within nine months of the effective date of the TRO, not approve and implement a BHC process within nine months.</p> <p>Absence of a BHC process(es) would impair carriers in the absence of mass-market switching provided as a UNE.</p> <p>An appropriate minimum number of loops contained in a batch is two.</p> <p>The BHC options proposed by SBC for its eleven-state region should be approved and implemented by this Commission, with modification determined by a cause opened by the OCC.</p>

Triennial Review Order

Requirements, Court Decisions, Recommendations, and Current Status

(As of June 21, 2004)

TRO Triggers	DC Circuit Court of Appeals Decisions (March 22, 2004)	Go State Reporting Comments Negotiation and Modified Rules	Staff's Recommendations and Findings Basic
Track 1 – Switching			
Define the Markets What are the appropriate geographic markets for evaluating impairment for mass market local switching in Oklahoma?	Subdelegation of § 251(d)(2) impairment determinations to state commissions <ul style="list-style-type: none"> The DC Circuit Court vacated, as unlawful, subdelegation of the FCC's § 251(d)(2) responsibilities, those portions of the TRO that delegate to state commissions the authority to determine whether CLECs are impaired without access to network elements, and in particular vacated the FCC's scheme for subdelegating mass market switching determinations. Nothing in the Order abolishes the unbundling requirements of the FTA or the O2A. The national impairment finding for mass market switches was based solely on hot cuts <ul style="list-style-type: none"> The DC Circuit Court vacated the FCC's determination that ILECs must make mass market switches available to CLECs as UNEs, subject to the Court's stay, and remand to the FCC for re-examination of the issue. 	<p>The FCC has encouraged the ILECs and CLECs to negotiate agreements for continued access to ILEC elements. The FCC Chairman has encouraged carriers to negotiate commercial agreements. The FCC has committed to write a set of sound rules that ensure access to incumbent networks where competition is impaired.</p> <p>As of the date of this matrix, the FCC has not stated formal requirements for the parties to follow nor offered an expected date for the final rules beyond their hope to have the rules ready by the end of the year.</p> <p>The FCC's top priority is to ensure that consumers do not experience any disruption in service and to provide stability in the marketplace."</p>	<p>Staff recommended that the markets be defined at the exchange level. The exchange meets the FCC's market definition criteria, and is consistent with the geographic market definition previously used by this Commission to evaluate local competition.</p>
Determine the appropriate cut-off for multi-line DS0 customers At what point does it become more economical to serve a multi-line DS0 customer with a DS1 loop?			<p>Staff recommends that the Commission establish a DS0 crossover point of ten lines. This crossover point classifies customers with ten or more DS0 lines as part of the enterprise market, and customers with less than ten DS0 lines as part of the mass market.</p>
Determine whether CLECs are impaired without access to unbundled local circuit switching when serving the mass market <ul style="list-style-type: none"> Has self-provisioning trigger been met? Has competitive wholesale trigger been met? Are operational factional factors impairing CLECs? Are economic factors impairing CLECs? 			<p>Self-provisioning Trigger No Oklahoma market where 3 or more carriers are serving mass market customers using self-provisioned switches.</p> <p>Competitive Wholesale Trigger Not met</p> <p>Operational Impairment Staff found delays in provisioning service, coordination, database, and ordering issues as operational barriers.</p> <p>Economic Impairment Staff economic factors impairing CLECs. These factors include costs of collocation, backhaul, and hot cuts to be significant economic barriers.</p>

TRO Issues	DC Circuit Court of Appeals Decision(s) (March 2, 2004)	FCC Staff's Recommendation for Negotiation and Modified Rules	Staff's Recommendation and Remaining Issues
Track 3a – Loops			
<p>DS1 -- 24 Voice Grade Loops</p> <p>The FCC found that impairment exists without access to unbundled DS1s.</p> <p><u>Competitive Wholesale Trigger</u> Must be two or more unaffiliated alternative providers that have access to the <u>entire</u> premises and offer the specific loop over their own facilities on a wholesale basis to other carriers.</p>	<p>The decision by the US Court of Appeals, which vacated and remanded part of the TRO back to the FCC, did not specifically address the portion of the TRO dealing with high-capacity loops on a customer-specific basis.</p>	<p>See comments for Track 1 -- Switching.</p>	<p>It is Staff's belief that the PUD should continue to gather and analyze data relating to Track 3a to develop more detailed findings regarding potential deployment for DS3 and Dark Fiber loops.</p> <p><u>Competitive Wholesale Trigger:</u> Five locations where trigger is met</p>
<p>DS3 -- 28 DS1s -- 672 Voice Grade Loops</p> <ul style="list-style-type: none"> The FCC found that impairment exists without access to unbundled DS3s. <p><u>Self-Provisioning Trigger</u> Must be two or more unaffiliated CLECs using their own self-deployed facilities.</p> <p><u>Competitive Wholesale Trigger</u></p>			<p>It is Staff's belief that the PUD should continue to gather and analyze data relating to Track 3a to development more detailed findings regarding potential deployment for DS3 and Dark Fiber loops.</p> <p><u>Self-Provisioning Trigger:</u> Five locations where trigger is met</p> <p><u>Competitive Wholesale Trigger:</u> No locations</p>
<p>OCn -- 3 DS3s -- 84 DS1s</p> <p>The FCC found that impairment does not exist without access to unbundled OCn</p>			<p>All parties concur with FCC findings</p>
<p>Dark Fiber -- Optical fiber through which no light is transmitted and no signal is carried.</p> <ul style="list-style-type: none"> The FCC found that impairment does exist without access to dark fiber at specific locations <u>Self-Provisioning Trigger</u> 			<p>It is Staff's belief that the PUD should continue to gather and analyze data relating to Track 3a to development more detailed findings regarding potential deployment for DS3 and Dark Fiber loops.</p> <p><u>Self-Provisioning Trigger:</u> No locations</p>

TRO Triggers	DC Circuit Court of Appeals Decision(s) (March 2, 2004)	FCC Stance Regarding Contract Negotiation and Modified Rules	Staff's Recommendations and Remaining
Track 3b – Dedicated Transport			
<p>DS1</p> <p>The FCC found that impairment exists without access to unbundled DS1 transport facilities, subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed.</p> <p>The three triggers that apply to Track 3b are:</p> <p><u>Self-deployment Trigger</u></p> <p>Impairment exists unless there are three or more unaffiliated CLECs using their own self-deployed transport facilities along a specific route regardless of whether these carriers make transport available to other carriers. <u>This trigger does not apply at the DS1 level.</u></p> <p><u>Wholesale Trigger</u></p> <p>No impairment exists where competing carriers have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity along a given route between ILEC switches or wire centers.</p> <p><u>Potential Trigger</u></p> <p>For this trigger, a state must consider and may also find no impairment on a particular route that it finds is suitable for "multiple, competitive supply," but along which this trigger is not facially satisfied.</p> <p>DS3 Transport -- very high-capacity transport</p>	<p>See comments for Track 1 -- Switching.</p> <p><u>Remaining dedicated transport issues</u></p> <ol style="list-style-type: none"> 1. Route-specific analysis of dedicated transport <p>The DC Circuit Court does 'not see' how the FCC can ignore facilities deployment along similar routes when assessing impairment.</p> <ol style="list-style-type: none"> 2. Wireless providers' access to unbundled dedicated transport <p>The DC Circuit Court "hold that the Commission's impairment analysis must consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired.</p> <p><u>Exclusion of "Entrance Facilities"</u></p> <p>The DC Circuit Court finds that the record is too obscure to make a final ruling and remanded the matter to the FCC for further consideration.</p>	<p>See comments for Track 1 -- Switching.</p>	<p>Staff may have additional work to do. It is not possible to determine the nature of the work at this time.</p> <p>Staff does not believe that any routes in Oklahoma meet any of the FCC's three triggers at this time.</p>

TRO Topics	DC Circuit Court of Appeals (March 19, 2015)
<p>facilities or bandwidths within such facilities</p> <p>The FCC found that competing providers are not impaired without unbundled access to "OCn" transport facilities.</p> <p>OCn Transport The FCC found that impairment exists <i>without access to unbundled OCn transport facilities</i></p> <p>Dark Fiber Transport The FCC found that impairment exists without access to unbundled dark fiber transport facilities, <i>subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed</i></p>	

TRO Trigger	DC Circuit Court of Appeals Decision(s) (March 2, 2004)	FCC Stance Regarding Contract Negotiation and Modified Rules	Staff's Recommendations and Remaining Tasks
<p>facilities or bandwidths within such facilities</p> <p>The FCC found that competing providers are not impaired without unbundled access to "OCn" transport facilities.</p> <p>OCn Transport The FCC found that impairment exists without access to unbundled OCn transport facilities</p> <p>Dark Fiber Transport The FCC found that impairment exists without access to unbundled dark fiber transport facilities, subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed</p>			

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